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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/483,388	01/13/2000	Chun R. Xia	BRIGP002	8312
22830	7590	11/23/2005	EXAMINER	
CARR & FERRELL LLP 2200 GENG ROAD PALO ALTO, CA 94303			POND, ROBERT M	
		ART UNIT	PAPER NUMBER	
		3625		

DATE MAILED: 11/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/483,388	XIA ET AL.	
	Examiner Robert M. Pond	Art Unit 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 29 August 2005.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,4-6,8-12,14-19 and 21-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,4-6,8-12,14-19 and 21-44 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>8/29/05</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Response to Amendment

The Applicant canceled claims 2, 3, 7, and 20, amended claims 1, 4-6, 9, 10, 15, 16, 21, 22, 25, 28, 29, 30, and 32, and newly added claims 34-44. All pending claims (1, 4-6, 8-12, 14-19, and 21-44) were examined in this final office action necessitated by amendment.

Response to Arguments

Pertaining to Rejection under 35 USC 101 in previous office action

Applicant's arguments filed 29 August 2005 with respect to claims 16 and 17 are persuasive. The Applicant amended claim 16 to overcome rejection. Rejection under 35 USC 101 is withdrawn.

Pertaining to Rejection under 35 USC 102 in previous office action

Applicant's arguments filed 29 August 2005 with respect to claims 1, 4-6, 8-12, 14-19, and 21-44 1-12 and 14-33 have been and are not persuasive.

The Examiner respectfully disagrees with the Applicant's analysis of Ginter (Assignee: InterTrust) pertaining to marketing objects. Ginter specifically discloses that "rules and controls" can be separately delivered. "Rules and control" may travel with the content they apply to, or "rules and control" can be delivered separately from content. Ginter further discloses that since no one can

use or access protected content without permissions from corresponding "rules and controls," a distributor can control use of content that has already been (or will be in the future) delivered. "Rules and controls" may be delivered over a path different from the path used for content delivery. "Rules and control" may also be delivered as some other time. Content may be used at the time it is delivered, or it may be stored for later use or reuse (see col. 55, lines 14-37). Ginter discloses "rules and controls" may be distributed at different times, in different ways, and by different VDE participants (see Fig. 2A; col. 52, lines 30-35). Ginter further discloses a given piece of content may be subject to different control information at different times or places of handling depending upon the evolution of its content control information. The evolution of control information can occur during the passing along of one or more VDE control information containing objects (see at least col. 46, lines 2-35).

Specific to dynamic updating, Ginter discloses an author changing their control structures (e.g. to reflect a sale, a new discounting model, a modified business strategy, etc.) that a user may or must receive in order to use the content container with the changed control structures. Ginter discloses by example, one or more control structures associated with a certain VDE content container may require a "refresh" for continued authorization to employ such structures, or the control structures may expire. This allows (if desired) a VDE content provider to periodically modify and/or add to VDE control information at an end user's site (employing the local VDE secure subsystem) (see at least col.

289, lines 45-56). Ginter discloses a consumer requesting controls subsequent to delivered content (see at least col. 289, lines 34-45). Ginter further discloses end-users periodically contacting the Virtual Distribution Environment (VDE) to transmit content usage information, replenish their budgets, or to obtain additional control structures (see at least col. 289, lines 5-33). In light of these disclosures, the Examiner is firmly convinced that Ginter discloses dynamic updating of upstream business rules that are delivered with content or subsequent to content delivery either proactively or at the request of the consumer or end-user.

Though not relied upon, Smith (Item: U) provides by example, an explanation on how InterTrust's dynamic updating of upstream business parameters impacts the consumer. For example, imagine that you receive a container enclosed in an E-mail message in which there is an article. In your haste, you forget about the article for six months. You rediscover the container, partially open the container to read the headline and lead-in sentences. You decide that the whole article is still relevant for a competitive-intelligence project you have going on and so you decide to complete the process and pay for the information. The envelope is opened and the contents are made available under whatever restrictions the rights holders have imposed. Since some time has elapsed, however, the rights holders may have set a bit so that InterTrust will "phone home" to check on the current prices. It may be the case that the distributor of the information has

already made the information free or that the price has been reduced in response to competitive pressure.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. **Claims 1, 4-6, 8-12, 14-19, and 21-44 are rejected under 35 USC 102(b) as being anticipated by Ginter et al. (Paper #20050314, US 5,910,987, hereinafter referred to as “Ginter”).**

Ginter teaches all the limitations of claims 1, 4-6, 8-12, 14-19, and 21-44. For example, Ginter discloses distributing digital content using an electronic container to a first party or multiple parties, digital content comprising marketing promotions, advertisements, or other intellectual property (see at least Fig. 1 (100); col. 32, lines 45-48; col. 257, lines 13-25). Ginter further discloses:

- renting a marketing object container to a first party, presented in a web page associated with a second party: rental as a basis of usage of an electronic object container distributed in a virtual distribution environment (see at least col. 2, line 24 through col. 8, line 35; col. 23, line 65 through col. 24, line 5); object container (see at least col. 7, line 31 through col. 8,

line 4; col. 10, lines 58-63); content associated with second party (see at least col. 2, lines 38-46); web page (see at least col. 100, lines 31-37).

- *selecting by the first party, marketing attributes configured to describe what marketing objects can be received by the marketing object container:* (see at least Fig. 84 (3400); col. 309, line 36 through col. 311, line 12).
- *marketing objects:* web-based content objects; an author changing his/her control structures (e.g. to reflect a sale, a new discounting model, a modified business strategy, etc.) that a user may or must receive in order to use the content container with the changed control structures (please note: objects containing marketing information with attributes); a consumer requesting controls subsequent to delivered content (see at least col. 289, lines 34-45), end-users periodically contacting the Virtual Distribution Environment (VDE) to transmit content usage information, replenish their budgets, or to obtain additional control structures (see at least col. 289, lines 5-33). Please note: dynamic updating of marketing object.
- *sending the selected marketing attribute to be automatically associated with the marketing object container:* (see at least Fig. 84 (3400); col. 309, line 36 through col. 311, line 12).
- *Third party association:* (see at least Fig. 84).
- *Revenue:* content providers and distributors (second and third parties) receive royalties for content usage as noted above (see at least Figs. 79-

83; col. 8, lines 17-24; col. 253, lines 22-24; col. 303, line 65 through col. 304, line 65).

- timing: subscription-based content delivery (please note examiner's interpretation: daily, weekly, monthly, yearly); monthly usage (see at least col. 289, lines 5-20; col. 301, lines 20-23).
- logic: (see at least col. 20, line 45).
- program product: (see at least col. 6, lines 27 through col. 7, line 30).

Pertaining to system claims 15, 34-36, and 39

Rejection of claims 15, 36-36, and 39 is based on the same rationale as noted above.

Pertaining to computer program product Claims 16, 17, and 40

Rejection of claims 16, 17, and 40 is based on the same rationale as noted above.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- Smith, Mary Grace; "A new set of rules for information commerce- -Rights-protection technologies and personalized-information commerce will affect all knowledge workers," CommunicationsWeek, 06 November 1995, pg34, Proquest #10792731, 7pgs; teaches super-distribution, InterTrust's content container, changes to upstream business parameters altering rights data for content previously delivered (see at least pages 5 and 6).

- Business Wire; "InterTrust announces a commerce system for digital information providers and payment processing companies," 22 June 1998, Proquest # 30358370, 7pgs; teaches InterTrust's Commerce 1.0.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M. Pond whose telephone number is 703-605-4253. The examiner can normally be reached on 8:30AM-5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Wynn Coggins can be reached on 703-308-1344. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robert M. Pond
Primary Examiner
November 20, 2005